

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7735 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgement?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT COMPOSITE LTD. FORMERLY KNOWN AS
Versus
UNION OF INDIA

Appearance:

Mr.Kamal Trivedi, of M/S TRIVEDI & GUPTA for Petitioners
MR MUKESH R SHAH for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/07/2000

ORAL JUDGEMENT: (Per B.C. Patel, J.)

Against the decision rendered by respondent No.2-Commissioner, the present petition is preferred. The law provides for appeal against the impugned decision before the Customs, Excise & Gold (Control) Appellate Tribunal ("CEGAT"). With the paper book, learned counsel has annexed number of judgments, pointing out that several courts as well as the Tribunals have taken a decision, whereby the contention, which he wants to advance before this Court, can be said to have been approved. He submitted that even this Court has taken decision on the similar line in Dipak Vegetable Oil Industries Limited v. Union of India, (52) ELT 222. We have heard the learned counsel at length. His apprehension is that if he is required to approach the Tribunal, in view of the Larger Bench decision of the Tribunal, possibly, he may not get justice. Our attention is drawn to the Apex Court judgment, (which has been delivered subsequent to the decision delivered by the Tribunal), in case of Tungabhadra Industries Limited v. Union of India, (118) ELT 545, wherein the decision of a Division Bench of this Court in Dipak Vegetable Oil Industries Limited (supra) has been considered.

We are of the view that as appeal is provided, the petitioners should first approach the appellate authority for making a grievance. Mr.Trivedi submitted that the question has been raised upto the Apex Court and he need not be asked to approach the appellate forum. Suffice to say that the Tribunal will have to consider the binding decisions of the Apex Court as well as the decision of this Court and the Tribunal will have to consider the decisions even while considering the application for stay.

The petitioners shall prefer appeal and an application within a period of three weeks, as stated by the learned counsel. The learned counsel states that the delay may be condoned in preferring the appeal. It goes without saying that the Tribunal will have to consider the fact that the petition was pending in this Court since October, 1999 and taking into consideration that aspect, the Tribunal will have to consider the question of delay as well. We are sure that the Tribunal will consider the application for condonation of delay in proper perspective, keeping this aspect in mind.

We further direct that if the decision on the application of stay is against the petitioners, the same shall not be implemented for a period of three weeks thereafter. The undertaking filed by the petitioners shall continue to operate till the application is

disposed of by the Tribunal, and three weeks thereafter.

Rule is accordingly discharged.

11th July, 2000 (B.C. Patel, J.)

(P.B. Majmudar, J.)

(apj)